

IC 36-9-25

Chapter 25. Sanitation Department in Certain Cities

IC 36-9-25-1

Application of chapter

Sec. 1. (a) This chapter applies to the following:

(1) A second class city located in a county having a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000).

(2) Each municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) in which the legislative body has adopted this chapter by ordinance.

(b) This chapter also applies to each second class city not in such a county in which the legislative body has adopted this chapter by ordinance.

(c) In addition, in a consolidated city sections 9 through 38 of this chapter apply to the department of public works and the board of public works, subject to IC 36-3-4-23.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.179; P.L.80-1997, SEC.19; P.L.170-2002, SEC.168.

IC 36-9-25-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to a board of sanitary commissioners, or board of public works of a consolidated city.

"Department" refers to a department of public sanitation, or department of public works of a consolidated city.

"District" means the area within the jurisdiction of a department.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-3

Establishment of department; composition of board of commissioners; oaths, surety bonds, and compensation of commissioners

Sec. 3. (a) A department of public sanitation is established as an executive department of the municipality.

(b) The department is under the control of a board of sanitary commissioners, which is composed as follows:

(1) If the department is established under section 1(a) of this chapter, the board consists of not less than three (3) but not more than five (5) commissioners. All of the commissioners shall be appointed by the municipal executive, unless one (1) commissioner is the municipal engineer. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) may be of the same political party.

(2) Notwithstanding subdivision (1), if the department is established under section 1(a) of this chapter and the district

contains at least one (1) city having a population of less than one hundred thousand (100,000) and at least one (1) town, the board consists of one (1) commissioner from each municipality in the district. The executive of each of those municipalities shall appoint one (1) commissioner. If after all appointments are made the board has fewer than five (5) commissioners, the executive of the municipality with the largest population shall appoint the number of additional commissioners needed to bring the total to five (5). Not more than three (3) of the commissioners may be of the same political party.

(3) If the department is established under section 1(b) of this chapter, the board consists of three (3) commissioners. Two (2) commissioners shall be appointed by the city executive and one (1) commissioner is the city civil engineer. However, if the department is located in a county having a population of:

(A) more than one hundred five thousand (105,000) but less than one hundred ten thousand (110,000);

(B) more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000);

(C) more than one hundred forty-eight thousand (148,000) but less than one hundred seventy thousand (170,000); or

(D) more than one hundred thirty thousand (130,000) but less than one hundred forty-five thousand (145,000);

and the city does not have a city civil engineer, the third commissioner shall also be appointed by the executive. The third commissioner, however, must be a licensed engineer with at least five (5) years experience in civil or sanitary engineering. In addition, in such a city the commissioners may not hold another public office. Not more than two (2) of the commissioners may be of the same political party.

(c) Before beginning the commissioner's duties, each commissioner shall take and subscribe the usual oath of office. The oath shall be endorsed upon the certificate of appointment and filed with the municipal clerk.

(d) Each commissioner shall also execute a bond in the penal sum of five thousand dollars (\$5,000) payable to the state and conditioned upon the faithful performance of the commissioner's duties and the faithful accounting for all money and property that comes under the commissioner's control. The bond must be approved by the municipal executive.

(e) The appointed commissioners are entitled to a salary of not less than three thousand six hundred dollars (\$3,600) a year during actual construction and not less than six hundred dollars (\$600) a year in other years.

(f) Notwithstanding IC 36-1-8-10, whenever this section requires that the membership of the board of sanitary commissioners not exceed a stated number of members from the same political party, at the time of appointment the appointee must:

(1) have voted in the two (2) most recent primary elections held by the party with which the appointee claims affiliation; or

(2) if the appointee did not vote in the two (2) most recent primary elections or only voted in one (1) of those elections, be certified as a member of the party with which the appointee claims affiliation by that party's county chairman for the county in which the appointee resides.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.64; P.L.319-1989, SEC.1; P.L.320-1989, SEC.1; P.L.12-1992, SEC.180; P.L.170-2002, SEC.169.

IC 36-9-25-4

Commissioners; terms of office; vacancies

Sec. 4. (a) The initial terms of the commissioners are as follows:

(1) If the department is established under section 1(a) of this chapter, the initial terms are one (1), two (2), and three (3) years for the first three (3) commissioners. If additional commissioners are appointed, their initial terms are four (4) years.

(2) If the department is established under section 1(b) of this chapter, the initial terms of the two (2) appointed commissioners are four (4) and three (3) years respectively. However, if a third commissioner has also been appointed, the commissioner's initial term is two (2) years.

All terms begin on January 1 following the establishment of the department.

(b) As the initial terms expire, successors shall be appointed for four (4) year terms. In a county that is listed in section 3(b)(3) of this chapter, the appointments must be made before January 16 in the year the term begins. If a vacancy occurs on the board, the appointing authority shall appoint a commissioner for the remainder of the term within thirty (30) days after the vacancy occurs.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.65; P.L.320-1989, SEC.2; P.L.12-1992, SEC.181.

IC 36-9-25-5

Commissioners; removal from office; appeals

Sec. 5. (a) A commissioner may not be removed from office except upon charges preferred before the municipal executive and a hearing held on them. The only permissible reasons for removal are neglect of duty and incompetence. The commissioner must be given at least ten (10) days' notice of the time and place of the hearing and the opportunity to produce evidence and examine and cross-examine witnesses. All testimony shall be given under oath. The municipal executive shall put his findings in writing and file them with the municipal clerk.

(b) If the charges are sustained and the commissioner removed, he may appeal the findings within ten (10) days after the date they are filed with the clerk to the circuit or superior court of the county in which the municipality is located. The commissioner shall file an original complaint against the executive, stating the charges preferred and the findings made. The court shall hear the appeal within thirty

(30) days after it is filed without a jury and shall either ratify or reverse the finding of the executive. The judgment of the court is final and an appeal may not be taken.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-6

Commissioners; meetings; officers; quorum; approval of actions; adoption of rules

Sec. 6. (a) Within six (6) months after the date this chapter is adopted by ordinance, or within thirty (30) days after the commissioners are appointed in a county that is listed in section 3(b)(3) of this chapter, the board shall hold a meeting for the purpose of organization. The board shall choose one (1) of its members to be president and another to be vice president, who shall perform the usual duties of those offices. The officers serve for a period of one (1) year or until their successors are elected and qualified. The municipal fiscal officer shall perform the same duties with the funds and accounts of the board as with the funds and accounts of the other executive departments of the municipality, except as otherwise provided in this chapter. The fiscal officer receives no additional compensation for performing these duties.

(b) A majority of the members of the board constitutes a quorum, and the concurrence of a majority is necessary for any action of the board. The board shall hold regular meetings at the times it fixes and may call special meetings at the times and upon the notice that it fixes by rule or resolution. All meetings must be open to the public. The board may adopt the rules that it considers necessary to conduct its meetings and business and to control and manage the property under its jurisdiction.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.66; P.L.12-1992, SEC.182.

IC 36-9-25-7

Certain cities; effect of adoption of chapter; enabling ordinances

Sec. 7. (a) This section applies to cities in a county that is listed in section 3(b)(3) of this chapter. However, subsections (b) and (c) of this section also apply to municipalities that adopt this chapter by ordinance under section 1(a) of this chapter.

(b) This chapter does not affect the enabling ordinances, the duties of the municipality, or the rights of bondholders with regard to sewage works revenue bonds or other outstanding revenue bonds issued before this chapter was adopted by ordinance.

(c) Adoption of this chapter by ordinance does not affect the system of fees for sewage treatment. All revenue derived from fees shall be applied only to the following purposes:

(1) The administrative expense, operation, construction, and maintenance of sewage works.

(2) The retirement of outstanding revenue bonds and any additional revenue bonds that may be issued for construction of sewage works and improvements, additions, and extensions to

them.

(3) The payment of the cost of improvements, additions, and extensions to the extent permitted by the ordinances authorizing the issuance of revenue bonds.

(d) The ordinance adopting this chapter must specify that the district initially includes all territory within the corporate boundaries of the city, including any territory, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the city that has been taken into or has been connected with the public sanitation system of the city in accordance with another statute if the sewage or drainage of that area discharges into or through the sewage system of the city.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.67; P.L.12-1992, SEC.183.

IC 36-9-25-8

Certain cities; enabling ordinances, specifications of purpose; interim board members; prior approval of bonds

Sec. 8. (a) This section applies to cities in a county having a population of more than one hundred thirty thousand (130,000) but less than one hundred forty-five thousand (145,000).

(b) The ordinance adopting this chapter must specify the purpose or purposes for which the district is established, which must be one (1) or more of the following:

- (1) To provide for the collection, treatment, and disposal of sanitary sewage and other water-carried wastes of the district.
- (2) To provide for the drainage of storm and surface water to relieve sanitary sewers of that water.
- (3) To reduce the pollution of watercourses in the district.
- (4) To provide for the collection and disposal of trash, garbage, and solid waste.

If not all of these purposes are listed in the ordinance, one (1) or more of the remaining purposes may, by subsequent ordinance, be added to the purposes of the district.

(c) After adoption of the ordinance, three (3) interim members of the board shall be appointed for terms until the January 1 following the adoption. On the January 1 following the adoption, members shall be appointed as provided in sections 3 and 4 of this chapter.

(d) Bonds of the district may not be sold without the prior approval of the city legislative body. In addition, the legislative body must approve all budgets and tax levies of the district.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.68; P.L.12-1992, SEC.184; P.L.170-2002, SEC.170.

IC 36-9-25-9

Jurisdiction of board

Sec. 9. The board shall manage and control all sewage works of the district. The board has concurrent power with the works board of the municipality to construct, reconstruct, maintain, repair, and regulate the use of all connecting and intercepting sewers. The board

shall collect and remove garbage, ashes, and other waste materials to prevent the pollution of watercourses within the district and to protect the public health. The board may purchase, acquire, construct, reconstruct, operate, repair, and maintain all sewage works.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-10

Powers of board

Sec. 10. In performing its duties the board may do the following:

- (1) If needed for sewage works, condemn, appropriate, lease, rent, purchase, and hold any real or personal property within the district or within five (5) miles outside the boundaries of the district.
- (2) Enter upon any lots or lands for the purpose of surveying or examining them to determine the location of any sewage works or other structures, roads, levees, or walls connected with or necessary for the use or operation of the facilities.
- (3) Design, order, contract for, construct, reconstruct, and maintain the sewage works.
- (4) Build or have built all roads, levees, walls, other structures, or lagoons that may be desirable in connection with sewage works and make improvements to the grounds and premises under its control, including the erection and operation of a plant for the removal of sand and gravel from the grounds.
- (5) Compel the owners, operators, or lessees of all factories, shops, works, plants, or other structures to treat, purify, or eliminate from the sewage and trade waste of the premises any ingredients that interfere with the successful operation of the sewage works. It may compel the owners, operators, or lessees of the premises located on a watercourse to direct an excessive flow of water into the watercourse.
- (6) Review and approve plans for privately constructed plants for the treatment or elimination of trade waste. This is to insure that an owner, operator, or lessee of a house, factory, shop, works, plant, or other structure that may be directly or indirectly connected with sewers emptying into the sewage works does not construct a purification plant, machine, or other device for eliminating or treating the trade waste from those places for the purpose of eliminating ingredients that would harm the sewage works until the plans have been submitted to and approved by the board. After plans have been submitted to the board, it may reject them in their entirety or order changes to be made that include its supervision and regulation of the operation. An appeal may be taken from the decision of the board rejecting the plans submitted or ordering changes by the owner, operator, or lessee of a proposed private plant, in the same manner as appeals from the works board as far as applicable.
- (7) Build or have built a plant or plants and all appurtenances for the treatment of sludge, pressing of sludge, or converting

sludge into marketable fertilizer.

(8) Sell any byproduct from the sewage works, or furnish any byproduct free for the use of the municipality or for other public uses, with revenue derived from the sale above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.

(9) Compel the owners, lessees, or agents in possession of lots or land from which sewers discharge sewage or drainage and pollute a watercourse or body of water or constitute a menace to public health and welfare to connect the sewers with drains leading directly or indirectly into sewage works regulating the use and assessing reasonable charges.

(10) Construct or have constructed regulating devices at the junction of combined sewers with intercepting sewers to regulate the discharge into the intercepting and connecting sewers to prevent the pollution of streams or bodies of water or a menace to the public health and welfare.

(11) Construct an incinerating or reduction plant or other plants for the conversion, destruction, or disposal of garbage, filth, ashes, dirt, and rubbish, and add to, reconstruct, and maintain it. It may operate the plant in connection with sewage works, and sell any byproducts derived from the garbage, filth, ashes, or rubbish, including sand and gravel taken from lands under the control of the board at prices that are determined by the board, or furnish it free to the municipality or for other public uses, with revenue derived above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.

(12) Take charge of all real property, belonging to the municipality and under the control of the works board, suitably located for sewage works if the board demands the works board, subject to contracts, to relinquish and transfer control of real and personal property used by the works board for the collection and removal of garbage and ashes. The transfer of personal property must be made by resolution adopted by the works board describing the property, with a copy of the resolution to be delivered to the board and made a matter of record in the minutes of the proceedings of the board.

(13) Collect and remove, or contract for the collection and removal of, all garbage, ashes, dead animals, refuse, and wastes from domestic premises, and construct or have constructed stations, including barns, garages, sheds, blacksmith shops, dumps, incinerators, and all other useful or necessary improvements for this purpose. This includes the power to collect and remove soil and other sewage in areas not provided with sewers, and then to discharge or dispose of it into sewage works.

(14) Enter into contracts in the name of the municipality, with the approval of the executive as provided by law.

(15) Employ and pay for all engineering, architectural, legal, and other professional services needed in carrying out this chapter, including determining the number, prescribing the duties, and fixing the compensation for all its engineers, chemists, attorneys, bacteriologists, surveyors, inspectors, clerks, stenographers, laborers, supervisors, and other employees as provided by law for other executive departments of the municipality.

(16) Adopt resolutions, rules and bylaws that are necessary to carry out this chapter, including repealing or amending them consistent with this chapter.

(17) Prepare a schedule of reasonable service fees and collect them from persons who own, lease, or possess or control as tenants or as agents lots or lands located outside the boundaries of the district if the lots or lands are benefited by connection into the sanitary sewer system of the district as described in this chapter, with the proceeds from sewage connections and treatment service credited to the general fund of the district for general use and maintenance purposes. The fees may be fixed, repealed, or amended, or the service discontinued, by the board at its discretion.

(18) Sue or be sued in the name of the municipality, with payment for obligations and of a judgment against the municipality in an action to be made solely from funds of the department and its district that may be available for this purpose.

(19) Pay for services rendered or for any other obligations incurred by the board while executing its powers, or pay any judgments, including interest and costs, by issuing and selling the bonds of the district, or obtaining temporary loans or levying taxes as authorized by this or other statutes for any other purpose.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-11

Fees; establishment; modification; collection; procedure

Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation,

maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the board from the delinquent user or owner of the property served in a civil action in the name of the municipality.

(g) Fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) This subsection applies to fees due after July 1, 1988. A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the penalties under subsections (f) and (g) and section 11.5 of this chapter, a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law.

In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.65; Acts 1982, P.L.77, SEC.22; P.L.55-1988, SEC.13; P.L.64-1989, SEC.3.

IC 36-9-25-11.1

Deposits to secure payment of fees

Sec. 11.1. In a consolidated city, the board may also require the users of the sewage service to make a reasonable deposit in advance of a connection or reconnection to the sewerage system to secure payment of the fees. The deposit may not exceed thirty-three percent (33%) of the estimated annual cost of the service for a particular user.

As added by P.L.349-1985, SEC.1.

IC 36-9-25-11.2

Fees; notice of delinquency

Sec. 11.2. If a fee established under section 11 of this chapter is not paid within thirty (30) days after it is due, a copy of any notice of delinquency sent to a delinquent user who is a tenant must be sent to the owner of the property occupied by the tenant at the latest address of the owner as shown on the property tax records of the county in which the property is located.

As added by P.L.237-1997, SEC.1.

IC 36-9-25-11.5

Discontinuance of water service; disputed bills; notice; liability of utility

Sec. 11.5. (a) As an alternative to the penalties provided in section 11 of this chapter, the board may require that the water utility providing water service to a delinquent user discontinue service until payment of all overdue user fees, together with any penalties provided in this section, are received by the municipality.

(b) If a fee established is not paid within one (1) monthly billing cycle after it is due, the board or its designee shall send notice to the delinquent user stating:

- (1) the delinquent amount due, together with any penalty;
- (2) that water service may be disconnected if the user continues not to pay the delinquency and any penalty; and
- (3) the procedure for resolving disputed bills.

The municipality shall provide by ordinance a procedure for resolving disputed bills that includes an opportunity for a delinquent user to meet informally with designated personnel empowered to correct incorrect charges. Payment of a disputed bill and penalties by a user does not constitute a waiver of rights to subsequently claim and recover from the municipality sums improperly charged to the user.

(c) If the user fails to pay the delinquent amount or otherwise

resolve the charges as specified in subsection (a), the board or its designee shall give written notice to the water utility serving the user to discontinue water service to the premises designated in the notice until notified otherwise. The notice must identify the delinquent sewer user in enough detail to enable the water utility to identify the water service connection that is to be terminated. Upon receipt of the notice, the water utility shall disconnect water service to the user.

(d) Water service may not be shut off under this section if a local board of health has found and certified to the municipality that the termination of water service will endanger the health of the user and others in the municipality.

(e) The water utility that discontinues water service in accordance with an order from the board or its designee does not incur any liability except to the extent of its own negligence or improper conduct.

(f) If the water utility does not discontinue service within thirty (30) days after receiving notice from the municipality, the utility is liable for any user fees incurred thirty (30) days after receipt of notice to discontinue water service and that are not collected from the user.

As added by P.L.349-1985, SEC.2. Amended by P.L.55-1988, SEC.14; P.L.64-1989, SEC.4; P.L.93-1993, SEC.9; P.L.98-1993, SEC.6.

IC 36-9-25-11.7

Overdue user fees; ordinance to expense as bad debts

Sec. 11.7. A municipality may, by ordinance, establish a procedure to expense as bad debt overdue user fees, together with any penalties provided under this chapter, if the amount of fees and penalties involved does not exceed twenty-five dollars (\$25).

As added by P.L.55-1988, SEC.15.

IC 36-9-25-12

Basis of fees; measurement of water and sewage usage

Sec. 12. (a) The fees for the treatment and disposal of sewage may be based on:

- (1) a flat charge for each sewer connection;
- (2) the amount of water used on the premises;
- (3) the number and size of water outlets on the premises;
- (4) the amount, strength, or character of sewage discharged into the sewers;
- (5) the size of sewer connections; or
- (6) any combination of these factors or other factors that the board determines necessary in order to establish just and equitable rates and charges.

(b) The board may enter into contracts with a water utility furnishing water service to users or property served in the district relative to:

- (1) ascertaining the amount of water consumed;
- (2) the computation of the amount of charge to be billed to each

user or property served;

(3) the billing and collection of the amounts; and

(4) the discontinuance of water service to delinquent users as provided in section 11.5 of this chapter.

(c) As an alternative to subsection (b), the board may require a water utility furnishing water service to users or property served in the district to perform the functions listed in subsection (b). If the water utility and the board do not agree upon the reasonable compensation to be paid to the water utility for the services described in subsection (b), the board or the water utility may apply to the utility regulatory commission to establish the reasonable compensation for the services. Upon receipt of an application, the utility regulatory commission, after notice to the water utility and the board and after a hearing, shall establish the reasonable compensation to be paid for the services. The water utility shall then render the services described in return for the compensation fixed.

(d) If a person owns or occupies real property that is connected to the sewage works and either directly or indirectly uses water obtained from a source other than a water utility that is not measured by a water meter acceptable to the board, then the board may require the person, at his own expense, to furnish, install, and maintain a water or sewage measuring device acceptable to the board.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.349-1985, SEC.3; P.L.23-1988, SEC.129.

IC 36-9-25-13

Authorized actions; regulation of kinds or amounts of chemicals and strengths of waste and other substances detrimental to sewage works

Sec. 13. (a) The board, in the name of the municipality, may bring an action to recover damages for:

(1) the breach of an agreement, express or implied, relating to the construction, management, or repair of sewage works under its control, including real property; or

(2) injury to the personal or real property used in the sanitary disposal of sewage in a municipality located within the district.

(b) The board may recover possession of property, may bring an action for the specific performance of an agreement, and may use, in the name of the municipality, any legal or equitable remedy necessary to protect and enforce the rights and perform the duties of the department.

(c) The board may establish limits on the kinds or amounts of chemicals and the strength of the waste or other substances the board considers detrimental to the sewage works. If a person discharges sewage into the sewage works that exceeds limits set by the board, the board may order the person to cease using the sewage works upon a hearing with notice. However, if evidence indicates a public health hazard is being created, the board may summarily order the person to cease without notice or hearing. Orders of the board may be enforced by bringing an action to enjoin discharges into the sewer

works in any court in the county having jurisdiction to hear equity actions. A person aggrieved by an order of the board is entitled to appeal the order to the circuit or superior court of the county in which the city is located. If an order is given without notice, an appeal must be perfected within ten (10) days after receipt of the order or the right to appeal is considered waived.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-14

Special taxing districts; incorporation of territory upon request; sewer service agreements

Sec. 14. (a) As to each municipality to which this chapter applies:

(1) all the territory included within the corporate boundaries of the municipality; and

(2) any territory, town, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the municipality that has been taken into the district in accordance with a prior statute, the sewage or drainage of which discharges into or through the sewage system of the municipality;

constitutes a special taxing district for the purpose of providing for the sanitary disposal of the sewage of the district in a manner that protects the public health and prevents the undue pollution of watercourses of the district.

(b) Upon request by:

(1) a resolution adopted by the legislative body of another municipality in the same county; or

(2) a petition of the majority of the resident freeholders in a platted subdivision or of the owners of unplatted land outside the boundaries of a municipality, if the platted subdivision or unplatted land is in the same county;

the board may adopt a resolution incorporating all or any part of the area of the municipality, platted subdivision, or unplatted land into the district.

(c) A request under subsection (b) must be signed and certified as correct by the secretary of the legislative body, resident freeholders, or landowners. The original shall be preserved in the records of the board. The resolution of the board incorporating an area in the district must be in writing and must contain an accurate description of the area incorporated into the district. A certified copy of the resolution, signed by the president and secretary of the board, together with a map showing the boundaries of the district and the location of additional areas, shall be delivered to the auditor of the county within which the district is located. It shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) In addition, upon request by ten (10) or more interested resident freeholders in a platted or unplatted territory, the board may define the limits of an area within the county and including the property of the freeholders that is to be considered for inclusion into the district. Notice of the defining of the area by the board, and

notice of the location and limits of the area, shall be given by publication in accordance with IC 5-3-1. Upon request by a majority of the resident freeholders of the area, the area may be incorporated into the district in the manner provided in this section. The resolution of the board incorporating the area into the district and a map of the area shall be made and filed in the same manner.

(e) In addition, a person owning or occupying real property outside the district may enter into a sewer service agreement with the board for connection to the sewage works of the district. If the agreement provides for connection at a later time, the date or the event upon which the service commences shall be stated in the agreement. The agreement may impose any conditions for connection that the board determines. The agreement must also provide the amount of service charge to be charged for connection if the persons are not covered under section 11 of this chapter, with the amount to be fixed by the board in its discretion and without a hearing.

(f) All sewer service agreements made under subsection (e) shall be recorded in the office of the recorder of the county where the property is located. The agreements run with the property described and are binding upon the persons owning or occupying the property, their personal representatives, heirs, devisees, grantees, successors, and assigns. Each recorded agreement that provides for the property being served to be placed on the tax rolls shall be certified by the board to the auditor of the county where the property is located. The certification must state the date the property is to be placed on the tax rolls, and upon receipt of the certification together with a copy of the agreement, the auditor shall immediately place the property certified upon the rolls of property subject to the levy and collection of taxes for the district. An agreement may provide for the collection of a service charge for the period services are rendered before the levy and collection of the tax.

(g) Except as provided in subsection (i), sewer service agreements made under subsection (e) must contain a provision that persons (other than municipalities) who own or occupy property agree for themselves, their executors, administrators, heirs, devisees, grantees, successors, and assigns that they will:

- (1) neither object to nor file a remonstrance against the proposed annexation of the property by a municipality within the boundaries of the district;
- (2) not appeal from an order or a judgment annexing the property to a municipality; and
- (3) not file a complaint or an action against annexation proceedings.

(h) This section does not affect any sewer service agreements entered into before March 13, 1953.

(i) Subsection (g) does not apply to a landowner if all of the following conditions apply:

- (1) The landowner is required to connect to a sewer service because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of service or connection to the sewer service are paid by a person other than the landowner or the municipality.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.66; P.L.172-1995, SEC.6.

IC 36-9-25-15

Special taxing districts; incorporation of territory by board

Sec. 15. (a) The board, on its own initiative, whenever any territory, by its contour and watershed, or because of the extension of sewers by the municipality, is capable of draining sewage into or connecting with the sanitary system, may incorporate any territory, whether platted or unplatted, into the district by adopting a resolution to that effect describing the reason it is to be included. A certified copy of the resolution is conclusive evidence in any proceeding that the territory described was properly incorporated and constitutes a part of the district, subject to this chapter.

(b) Immediately after the passage of a resolution under subsection (a), a notice stating the time and place for a public hearing on the resolution shall be published in accordance with IC 5-3-1. By the date and time of the hearing any affected person may file in the office of the board a written remonstrance to having his lands included. The board shall either confirm, modify, or rescind the resolution after the hearing. An appeal may be taken from the decision by one (1) or more persons considering themselves aggrieved or injuriously affected, as long as those appealing have filed written remonstrances, as provided in this subsection, by filing their complaint within thirty (30) days after the final decision of the board. The appeal shall be governed by IC 34-13-6.

(c) If the court is satisfied upon hearing an appeal under subsection (b):

(1) that less than seventy-five percent (75%) of the persons owning property in the territory sought to be incorporated in the district have remonstrated; and

(2) that the incorporation of the territory into the district will be for its interest and will cause no manifest injury to the persons owning property in the territory;

the court shall so find and the incorporation shall be ordered. If the court is satisfied that seventy-five percent (75%) or more of the persons owning property in the territory sought to be incorporated have remonstrated, then the incorporation may not be ordered unless the court further finds from the evidence that unless it is incorporated, the health and welfare of residents of the territory or of the adjoining lands will be materially affected and that the safety and welfare of the inhabitants and property of other persons and property will be endangered.

(d) Pending an appeal under subsection (b) and during the time within which the appeal may be taken, the territory sought to be incorporated is not a part of the district. Upon the determination of the appeal, the judgment must particularly describe the resolution

upon which the appeal is based. The clerk of the court shall deliver a certified copy of the judgment to the secretary of the board, who shall record it in the minute book of the board and make a cross-reference to the page upon the margin where the original resolution was recorded. If a decision is adverse to an incorporation, further proceedings may not be taken by the board to incorporate that territory within the district for a period of one (1) year after the rendition of the judgment.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.67; P.L.1-1998, SEC.216.

IC 36-9-25-16

Tax levies; liability of disannexed and newly added territory

Sec. 16. (a) If any bonds of the district are outstanding, and until they are fully paid, all property included within the district at the time the bonds were issued and sold remains subject to taxes levied and for its proportion of the indebtedness, notwithstanding that the property and territory may have been disannexed from the district.

(b) Any property in territory added to the district, as a condition of the special benefits it receives, becomes liable for its proportion of all taxes levied to pay all bonds of the special taxing district that are either outstanding or are later issued and sold. The proportion of taxation shall be determined in the same manner as when territory is annexed to a municipality under IC 36-4-3.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-17

Payment of preliminary expenses

Sec. 17. (a) All preliminary expenses actually incurred by the board in providing necessary records, giving notice, employing clerks, engineers, attorneys, and other employees, making surveys, and all other expenses that must be paid before the issue and sale of the bonds under section 27 of this chapter, and before the collection of taxes levied under section 32 of this chapter, shall be met and paid according to this section. The board shall, from time to time, certify items of expense to the municipal fiscal officer, directing him to pay those amounts. The fiscal officer shall at once draw his warrant, with the warrant to be paid out of the unappropriated part of the general fund of the municipality, without a special appropriation being made by the municipal legislative body.

(b) If there is no unappropriated money in the general fund, the fiscal officer shall recommend to the legislative body either the temporary transfer from other funds of the municipality of a sufficient amount to meet the items of expense, or the making of a temporary loan for this purpose. The legislative body shall, at once, make the transfer or authorize the temporary loan in the same manner that other temporary loans are made by the municipality. However, the fund or funds of the municipality from which payments are made must be fully reimbursed and repaid by the board:

(1) out of the first proceeds of the sale of bonds to the extent

that expenses paid are chargeable to the cost of acquiring land or the construction of a work under a resolution adopted and confirmed under section 18 of this chapter; or

(2) out of the fund raised by taxation under section 32 of this chapter to the extent that expenses paid are in the nature of a general expense of the board.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-18

Findings; preparation of general plans in connection with project; declaratory resolutions; adoption; remonstrance; hearings and appeals

Sec. 18. (a) If upon investigation it is found by the board of a municipality located on or near a watercourse that:

(1) the watercourse is being polluted by the discharge of sewage, drainage, or other harmful matter from the sewage or drainage systems of the municipality;

(2) a system of sewage disposal is necessary for the public health and welfare; and

(3) the construction of a system for the disposal of the sewage and drainage of the territory will be of public utility and benefit;

the board shall have prepared general plans for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also have prepared separate descriptions of all real property and of all personal property affected, and shall determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any part of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.

(b) When general plans under subsection (a) have been prepared by the board, it shall adopt a resolution declaring that, upon investigation, it has been found:

(1) that the watercourse particularly described in the resolution is being polluted by the discharge of sewage, drainage, or other harmful matter accumulating within the boundaries of the district; and

(2) that it is necessary for the public health and welfare and will be of public utility and benefit to construct and maintain sewage works to prevent the pollution of the watercourse, and, for that purpose, to appropriate the property described.

The board shall adopt all general plans and estimates in the resolution, which must be open to inspection by all persons interested in or affected by the appropriation of property or the construction of the work.

(c) Upon the adoption of the resolution, the board shall, in accordance with IC 5-3-1, publish notice of:

(1) the adoption; and

(2) the fact that general plans and estimates have been prepared and can be inspected.

The notice must name a date on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings and when it will determine the public utility and benefit of the project. A similar notice shall be mailed to each owner of land to be appropriated under the resolution. If a nonresident owner's residence is unknown to the board, then he is considered to have been notified of the pendency of the proceedings by the publication of notice. All persons affected in any manner by the proceeding, including all taxpayers in the district, are considered to be notified of the pendency of the proceedings and of all subsequent acts, hearings, adjournments, and orders of the board by the original notice by publication.

(d) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased, to be purchased, or to be appropriated or damaged to give a description of the entire tract by metes and bounds whether the property is composed of one (1) or more lots or parcels and whether it is owned by one (1) or more persons. If the land or a part of it is to be acquired by purchase, the resolution must also state the maximum proposed cost.

(e) The board may, at any time before the adoption of the resolution, obtain from the owner or owners of the land an option for its purchase or may enter into a contract for its purchase upon terms and conditions that the board considers best. The option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution and to the condition that the land may be paid for only out of the special fund resulting from the sale of sanitary district bonds as provided in this chapter.

(f) The title to any land, rights-of-way, or other property acquired under the resolution, whether by purchase or by appropriation, does not vest in the municipality until it is paid for out of the special fund created by the sale of bonds. Neither an indebtedness nor an obligation of any kind is incurred by the municipality in its corporate capacity because of the acquisition of land, rights-of-way, or other property. All land, rights-of-way, or other property acquired shall be held by the municipality in trust for sanitary purposes for the use and benefit of the district and for the general public.

(g) At or before the time fixed for the hearing, an owner of land, rights-of-way, or other property to be appropriated under the resolution or injuriously affected, including any person owning real or personal property located within the boundaries of the district, may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances that have been filed. After considering them, the board shall take final action

determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution. The final action shall be recorded, and is final and conclusive upon all persons. However, a person who has remonstrated in writing as provided in this subsection and who is aggrieved by the decision of the board, may, within ten (10) days, take an appeal to the superior court of the county in which the district is located.

(h) The remonstrator shall file in the office of the clerk of the court a copy of the order of the board and his remonstrance, together with his bond conditioned to pay the costs of the appeal if the appeal is determined against him. The only ground of remonstrance that the court has jurisdiction to hear on appeal is whether it will be of public utility and benefit to establish and construct the proposed sewage works described in the resolution. The burden of proof is on the remonstrator. The cause shall be summarily tried by the court without a jury as other civil cases are tried. All of the judges of the court shall sit in the trial. All remonstrances upon which an appeal is taken shall be consolidated and heard as one (1) cause of action by the court. The cause shall be heard and determined by the court within thirty (30) days after the time of the filing of the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall either confirm the final action of the board or sustain the remonstrance. The judgment of the court is final and conclusive upon all persons, and an appeal may not be taken from the judgment of the court.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.68; P.L.38-1984, SEC.4; P.L.17-1985, SEC.26.

IC 36-9-25-19

Construction of sewage works; special tax

Sec. 19. After final action of the board or of the court confirming the resolution in its original or a modified form, all property located within the boundaries of the district is subject to a special tax to provide money to pay the total cost of the construction of the sewage works, including the acquisition of all necessary land or rights-of-way as described in the resolution of the board and all necessary incidental expenses. The special tax constitutes the amount of benefits resulting to the property from the proceedings and shall be levied as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-20

Construction of sewage works; condemnation; list of affected property and owners

Sec. 20. If the resolution provides for the appropriation of property or rights-of-way, after final action by the board or by the court on appeal, the board shall have prepared a list of all the owners or holders of property and of interests sought to be taken or that will be injuriously affected. The list must also show with reasonable

certainly a description of the property to be appropriated or injuriously affected belonging to those persons or owners, and this certainty in names and descriptions need not exceed that required in the assessment of taxes.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-21

Construction of sewage works; condemnation awards; notification of owners

Sec. 21. (a) After completion of the list, the board shall consider, determine, and award the damages sustained by the owners of the parcels of land or rights-of-way required to be taken and appropriated or that will be injuriously affected. When the awards are completed, the board shall have a written notice served upon the owner of each piece of property, showing the amount of the award, by leaving a copy at his last usual place of residence in the municipality or county or by delivering the copy to the owner personally.

(b) If the person is a nonresident, or if his residence is unknown, he shall be notified by publication in accordance with IC 5-3-1. The notice must name a date on which the board shall receive or hear remonstrances from persons regarding the amount of their respective awards of damages. Persons not included in the lists of awards, but claiming to be entitled to them, are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board as provided in section 18 of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.69.

IC 36-9-25-22

Construction of sewage works; condemnation awards; mentally incompetent persons

Sec. 22. (a) If a person having an interest in land affected by the proceedings is mentally incompetent or under eighteen (18) years of age, the board shall certify that fact to its attorney.

(b) The attorney shall apply to the proper court and secure the appointment of a guardian for that person. The board shall then give notice to the guardian, who shall appear and protect the interest of the protected person. However, if the mentally incompetent person or person under eighteen (18) years of age already has a guardian, the notice may be served upon that guardian. The requisites of notice to the guardian are the same as for other notices.

(c) If there are defects or irregularities in the proceedings with respect to one (1) or more interested persons, they do not affect the proceedings unless they touch the interests or property of the person or persons and do not affect any other person. If a defect does exist, supplementary proceedings may be had in order to supply them.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.33-1989, SEC.128.

IC 36-9-25-23

Construction of sewage works; condemnation awards; remonstrances; hearings

Sec. 23. (a) A person notified or considered to be notified under the preceding sections of this chapter may appear before the board on the day fixed for hearing remonstrances regarding awards and remonstrate in writing against them. All persons appearing before the board who have an interest in land or rights-of-way to be appropriated or injuriously affected must be given a hearing.

(b) After the remonstrances have been received and the hearing held, the board shall either sustain the awards or modify the awards by increasing or decreasing them.

(c) A person remonstrating in writing who is aggrieved by the decision of the board may, within ten (10) days after the decision, take an appeal to the circuit or superior court in the county in which the municipality is located. The appeal affects only the amount of the award of the person appealing.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-24

Construction of sewage works; condemnation awards; appeals

Sec. 24. (a) An appeal may be taken by filing an original complaint in court against the board stating the action of the board regarding the award and stating the facts relied upon as showing an error on the part of the board. The court shall hear the matter of the award de novo and confirm, decrease, or increase the award. The cause shall be tried by the court without a jury as other civil cases are tried.

(b) All appeals shall be heard and determined by the court within thirty (30) days after the appeal is filed. The plaintiff in the appeal may recover costs only if the court increases the amount of damages awarded in favor of the property owner by ten percent (10%) or more.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.317, SEC.24.

IC 36-9-25-25

Construction of sewage works; condemnation awards; manner of payment

Sec. 25. (a) The board shall, upon the completion of the award of damages or upon the determination of appeals taken, make out certificates for the proper amounts and in favor of the proper persons. Upon the presentation of the certificate to the municipal fiscal officer, the person is entitled to the amount due out of the separate and specific fund derived from the sale of bonds provided in section 27 of this chapter. The payments may not be made from other sources or funds.

(b) Certificates or vouchers shall, whenever practical, be actually tendered to the person entitled to them. If this is impractical, they shall be kept for the persons in the office of the board. The making and filing of the certificates constitute valid and effectual tender to

the person entitled to them at the time or as soon as there is sufficient money to pay them. They shall be delivered to him on request.

(c) In case of dispute or doubt as to which person is entitled to the money, the board shall make out the certificate in favor of the attorney appointed by the board for the use of persons entitled to it. The attorney shall then draw the money and pay it into the court in a proceeding requiring the various claimants to interplead and have their respective rights determined.

(d) If an injunction is obtained because damages have not been paid or tendered, the board may tender the certificate for the amount with interest from the time of entry upon the property if entry has been made, plus all accrued costs. The injunction shall then be disposed of, if there is sufficient money to pay the certificate. The pendency of an appeal as provided in section 24 of this chapter does not affect the validity of a tender made under this section, but the board may enter upon and take possession of the property in question.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-26

Construction of sewage works; notice of confirmation of resolution; bids; contracts

Sec. 26. (a) If the board, or the court hearing an appeal, finally confirms the resolution, the board shall have published, in accordance with IC 5-3-1, a notice of the general nature of the work and of the fact that detailed plans, drawings, and specifications are on file in the office of the board.

(b) The board may advertise for and receive construction bids at any time after confirming the resolution. The board shall require each bidder to deposit with his bid a certified check or satisfactory bond by an incorporated surety company in good standing and qualified to do business in Indiana in an amount that the board determines to be at least sufficient to insure the execution of the contract for which the bid is made. Each bidder shall also file with his bid an affidavit that he has not, directly or indirectly, entered into any combination, collusion, understanding, or agreement with another bidder to maintain the price of the work or contract, to prevent another bidder from bidding, or to induce a bidder to refrain from bidding on the contract or work. The affidavit must also state that the bidding is made without regard to any other bidder and without any agreement, understanding, or combination, either directly or indirectly, with any other persons concerning the bidding.

(c) If, after a contract has been let, it appears that the successful bidder is guilty of collusion, combination, understanding, or agreement, as defined in the affidavit, the successful bidder forfeits the contract and the work shall be relet by the board. The board may impose conditions upon the bidders regarding bond surety, guaranteeing the good faith and responsibility of the bidders and the faithful performance of the work according to contract, keeping the work in repair for a given length of time, or for another purpose. The

board may reject any bids, but if it does reject all bids notices must be published as originally required before other bids may be received.

(d) The board may let part of the proposed work under different contracts. A contract may not be let at a bid higher than the estimate of cost of the work to be performed under the contract. However, the board may make a new estimate of the cost of the work at any time after the adoption of the resolution required by section 18 of this chapter and before the advertising for the receipt of bids for the construction of the work. If a new estimate is made, notice shall be given by publication in accordance with IC 5-3-1 naming a date when a public hearing will be held to determine the public utility of the new estimate.

(e) The contracts must expressly state that payments for all work shall be made only from the special fund derived from the proceeds of bonds authorized for this purpose. If a contract is executed for the construction of sewage works under this chapter, the validity of the contract may be questioned only in an action to enjoin the performance of the contract brought within fifteen (15) days after the date of execution. Sixteen (16) days after execution, all proceedings and orders of the board preliminary to and including the contract are valid, conclusive, and binding upon all persons and are not subject to attack.

(f) Additions or extensions to sewage works constructed under this chapter shall be built under contract entered into under this section in the same manner as the contract for the original works. The cost of additions or extensions, including additional land or rights-of-way acquired by the board, may be met by the sale of additional bonds to be issued and sold by the board and the levy of special taxes to retire the bonds as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.70.

IC 36-9-25-27

Construction of sewage works; bond issues

Sec. 27. (a) To raise money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in sections 19 and 29 of this chapter, the board may have issued, in the name of the municipality, the bonds of the district. The bonds may not exceed in amount the estimated cost of all land, rights-of-way, and other property to be acquired and the estimated cost of all construction as provided in the resolution, including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction. The expenses to be covered by the bond issue include all expenses of every kind actually incurred preliminary to acquisition of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses.

(b) If different parcels of land are to be acquired, or if more than one (1) contract for work is let by the board at approximately the same time, whether under one (1) or more resolutions of the board, the estimated cost may be combined in one (1) bond issue. The bonds shall be issued in denominations of at least one thousand dollars (\$1,000) each and shall have a final maturity of not later than fifty (50) years from the date of issue. The bonds are negotiable unless registered, but may be made registrable for principal only or principal and interest. The bonds may be made redeemable before the stated maturities on terms and conditions and at the premiums that the board determines in the resolution authorizing the issuance of the bonds.

(c) Upon adoption of a resolution ordering bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The municipal executive shall execute the bonds and the fiscal officer shall attest them. The bonds and interest are exempt from taxation for all purposes, except the financial institutions tax imposed under IC 6-5.5 or an inheritance tax imposed under IC 6-4.1. All bonds issued by the board shall be sold by the fiscal officer to the highest bidder, but not for less than par, after giving notice of the sale by publication in accordance with IC 5-3-1.

(d) The bonds are not a corporate obligation or indebtedness of the municipality, but constitute an indebtedness of the district as a special taxing district. Except as provided in section 29(c) of this chapter, the bonds and interest are payable only out of a special tax levied upon all the property of the district as provided in this chapter. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(e) The board may sell bonds of the district to run for a period of five (5) years from the date of sale. The five (5) year bonds are exempt from taxation for all purposes except for the financial institutions tax imposed under IC 6-5.5. The board may sell bonds of the district in series for the purpose of refunding at any time the five (5) year bonds. Actions questioning the validity of the bonds issued or to prevent their issue may not be brought after the date set for the sale of the bonds, and all bonds are incontestable for any cause after that date.

(f) The total amount of the bond issue, including bonds already issued and to be issued, may not exceed twelve percent (12%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds issued in violation of this subsection are void.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.71; P.L.27-1986, SEC.5; P.L.21-1990, SEC.57; P.L.80-1997, SEC.20; P.L.254-1997(ss), SEC.34; P.L.6-1997, SEC.223; P.L.2-1998, SEC.86; P.L.2-1998, SEC.87.

IC 36-9-25-28

Deposit and use of funds

Sec. 28. (a) All proceeds from the sale of bonds under section 27 of this chapter shall be kept as a separate and specific fund to pay the cost of land, rights-of-way, and other property acquired and for construction under the resolution, including all costs and expenses incurred in connection with the project. The proceeds may not be used for any other purpose. The proceeds shall be deposited at interest with the depository or depositories of other public funds of the municipality, and all interest collected on them belongs to the fund. Any surplus of funds remaining out of the proceeds after all expenses are paid shall be paid into and becomes a part of the sanitary district bond fund.

(b) Money derived from sources other than the sale of bonds, such as state or federal reimbursement grants, matching funds, or other contributions, including money derived from a project financed from bond monies, shall be deposited in:

- (1) the sanitary district bond fund;
- (2) the sanitary maintenance and general expense fund; or
- (3) a separate fund established by the board for extensions, additions, and improvements to the sewage works of the district.

The money may be expended as other money is expended by the board.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-29

Construction of sewage works; payment of bonds; tax levy; use of revenues in lieu of levy

Sec. 29. (a) In order to raise money to pay all bonds issued under section 27 of this chapter, including interest, and except as set forth in subsection (c), the board shall levy each year a special tax upon all the property of the district, to meet and pay the principal of the bonds as they mature, together with all accrued interest. The board shall have the tax levied each year certified to the municipal fiscal officer and to the auditor of the county in which the district is located by October 1. The tax as levied and certified shall be estimated and entered upon the tax duplicate by the county auditor. The tax shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the sanitary district bond fund. It shall be applied to the payment of the bonds and interest as they mature and not to another purpose. All accumulations of the fund before their use for the payment of the bonds and interest shall be deposited with the depository or depositories of other public funds in the municipality. The fund may also be invested as other funds are invested. In determining the amount of levy necessary for this section, the board shall consider the amount of revenue, if any, to be derived from the collection of fees for sewage treatment service above the amount of revenues necessary to be applied to the

operation, maintenance, and administrative expenses of the district.

(c) In lieu of making a levy under this section, or to reduce the amount of the levy, the board may set aside, by resolution, the revenues of the district to be collected before the maturity of the principal and interest of the bonds payable in the following calendar year. If the board adopts the resolution, then the board may not use any part of the amount set aside out of the revenues for any purpose other than the payment of the bonds and interest. A proportionate payment of the amount shall be made to the bond fund monthly.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.21.

IC 36-9-25-30

Construction of sewers, drains, or appurtenances; procedure

Sec. 30. (a) If the board finds it necessary to build, alter, or repair a sewer, drain, or appurtenance used in connection with sewage works in a public way or other public place in the district or a highway outside its boundaries, it shall file with the works board of the municipality, or the executive of the county in which the municipality is located, a petition and a map showing the route of the sewer or drain or the location of the structure or appurtenance proposed to be built, altered, or repaired, including the part of the public way or other public place to be used in the work. That body shall then adopt a resolution granting the board the right to use the public way or other public place.

(b) If the board shows in the petition that it is necessary to open or vacate a public way or public place, the appropriate body shall promptly begin the proceedings necessary for the opening or vacation. Within a reasonable time after the completion of the work, the board shall restore the surface of a public way or public place to the same condition that it was in before the performance of the work.

(c) If the land on which it is necessary to build, alter, or repair a sewer, drain, structure, or appurtenance in connection with the sewage works is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute and is being used for that purpose by the body appropriating it, the public use or prior condemnation does not bar the board from condemning the use of the land for purposes in connection with the sewage works. However, the use by the board does not permanently prevent the use of the land for the public use or by the body condemning or appropriating the land. In addition, in a proceeding prosecuted by the board to condemn the use of the land for purposes permitted by this chapter, the burden is upon the board to show that its proposed use will not permanently interfere with the continued public use of the land or by the body condemning it, including its successors.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-31

Payment of general expenses; special tax levy for payment of bonds

Sec. 31. To provide money to pay for general expenses of the

board not chargeable to the cost of any property acquired or work done under a resolution of the board for which bonds of the district are issued, the board may issue the bonds of the district in an aggregate amount not to exceed two percent (2%) of the adjusted value of the taxable property within the district as determined under IC 36-1-15. The bonds are payable from a special tax, which the board shall levy annually at the rate required to finance the bonds. The tax shall be levied, collected, and expended according to section 32 of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.6-1997, SEC.224.

IC 36-9-25-32

General expenses and operation of sewage works; tax levy; procedure; loans

Sec. 32. (a) To provide money to pay:

- (1) all general expenses of the board, including salaries of officers and employees, fees and expenses for professional services, and other items of expense not chargeable to the cost of property acquisition or work done under a resolution of the board for which bonds of the district are issued; and
- (2) for the operation, maintenance, and repair of sewage works, including the cost of the collection and removal of garbage and ashes;

a tax on all the taxable property in the district, at the rate required to provide the money needed to defray all expenses, shall be levied annually by the board.

(b) The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes in the same manner as state and county taxes are estimated, entered, collected, and enforced. The county treasurer shall, by the tenth day of each month, notify the board of the amount of taxes collected during the preceding month and shall credit a fund to be known as the sanitary maintenance and general expense fund with that amount. The fund may not be used for a purpose other than one stated in this section. The board has complete and exclusive authority to expend on behalf of the district all money thus realized. Warrants for the expenditures shall be drawn by the municipal fiscal officer upon vouchers of the board.

(c) The board may, by resolution, make:

- (1) temporary loans in anticipation of taxes actually levied under this section; or
- (2) emergency loans for the expenditure of any sums not provided for in the current levy of the board, for which a levy shall then be made in the next annual budget of the board.

The loans mature and shall be paid within one (1) year after the date the loan is made and may bear interest at any rate payable at the maturity of the loan. The warrants or other evidence of the loans may not be sold for less than par. Before making the loan, notice of the time, place, amount, and terms of the loan shall be given by

publication in accordance with IC 5-3-1. The warrants carry no personal obligation for their payment and are payable only out of the tax levied.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.72; Acts 1982, P.L.77, SEC.23.

IC 36-9-25-33

Disposition of surplus funds; funds belonging to sanitary districts

Sec. 33. (a) All money remaining in a fund to the credit of the board at the end of the calendar year belongs to the fund for use by the board for the purposes for which the fund was created. In addition, all money raised under this section shall be deposited at interest with the depository of other public funds of the municipality, with all interest collected on the fund belonging to the fund.

(b) Notwithstanding the provisions of any other statute, money collected for or belonging to a sanitary district belongs to the sanitary district, and not to any city or town in the sanitary district. This money shall be deposited in an interest bearing account, and all interest earned from this deposit shall belong to the sanitary district. If no statutory provision exists to require the crediting or deposit of this interest to a specific fund of the sanitary district, the interest shall be deposited in the sanitary district's sanitary maintenance and general expense fund.

(c) Notwithstanding subsections (a) through (b), money may be transferred from the fund as provided in IC 36-1-8-4.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.318, SEC.1; P.L.57-1991, SEC.4.

IC 36-9-25-34

Deposit and use of fees; revolving fund for payment of preliminary expenses

Sec. 34. (a) All revenues derived from the collection of fees for sewage treatment become a part of the sanitary maintenance and general expense fund established under section 32 of this chapter and shall be deposited, held, and used as provided in that section, except any part that the board sets aside in the sanitary district bond fund established under section 29 of this chapter or the sinking fund established under section 41 of this chapter.

(b) The board may appropriate and set aside from the sanitary maintenance and general expense fund an amount of money to be used as a revolving fund for the payment of necessary preliminary expenses incurred by the board in connection with proposed projects, such as making surveys, estimating cost, employing engineers and other employees, preparing plans and specifications, and all other expenses to be paid before the issuance and sale of bonds under section 27 of this chapter.

(c) The revolving fund shall be fully repaid by the board out of the first proceeds of the sale of bonds to the extent that the expenses paid are chargeable to the cost of acquiring land or construction under a resolution adopted and confirmed under section 18 of this chapter.

The appropriations to the revolving fund shall be made in accordance with statutes governing appropriations by municipal corporations, but it is not necessary to appropriate the money set aside in the revolving fund before making expenditures from it.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.22.

IC 36-9-25-35

Payment of contracts, condemnation awards, etc.; retention of portion of contract payments

Sec. 35. (a) From the sanitary district bond fund and not from any other source, the board shall pay to the appropriate parties the amounts respectively due them for land, rights-of-way, or other property taken or purchased or for work done by contract or otherwise. If all or part of the land, rights-of-way, or other property is secured by purchase or contract, payment shall be made according to the terms of the contract. If property is taken by condemnation under this chapter, the amount of damages assessed shall be paid within ninety (90) days after the final determination of the condemnation proceedings or as soon after that as the fund from the bonds is available. The title to the land, rights-of-way, or other property or that part paid for or otherwise acquired for that purpose then vests in the municipality in the manner, to the extent, for the purpose, and subject to the limitations of this chapter.

(b) The board shall order that payments from the funds be made to contractors in the amounts and at the times they determine. The board may retain a part of the amount otherwise due the contractor. The amount that may be retained by the board is as follows:

- (1) Until work is fifty percent (50%) complete, not more than ten percent (10%) of the payment claimed.
- (2) When work is fifty percent (50%) complete, five percent (5%) of the value of all work satisfactorily completed to date, as long as the contractor is making satisfactory progress and there is no specific cause for greater withholding.
- (3) When the work is substantially complete (operational or beneficially occupied), an amount below five percent (5%) that is necessary to assure completion.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-36

Property acquisitions; filing and recording requirements

Sec. 36. Within sixty (60) days after land or a right in it is paid for and acquired under this chapter, the board shall file and have recorded in the recorder's office in the county in which the land is located a description of it sufficiently accurate for its identification, together with a statement of the purpose for which it is acquired or taken signed by a majority of the board members.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-37

Authority to expend money; warrants and vouchers

Sec. 37. Money raised under this chapter may be expended only upon warrants drawn by the municipal fiscal officer upon vouchers of the board. An appropriation is not necessary, but all money raised under this chapter is considered appropriated to the respective purposes stated and is under the control of the board. The board has complete and exclusive authority to expend the money for the purposes provided.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-38**Construction of sewers connecting with sewage works**

Sec. 38. After the erection and completion of sewage works under this chapter, any municipality within the boundaries of the district shall construct and maintain sewers so that they directly or indirectly convey all sewage and drainage matter into the sewage works.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-39**Certain departments; temporary loans in anticipation of funds**

Sec. 39. (a) This section applies only to departments in a county having a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

(b) The board may secure temporary loans in anticipation of revenues of the district actually levied and in the course of collection for the fiscal year in which loans are made. The loans must be authorized by a resolution of the board, and the securities evidencing them shall be issued and sold in the same manner as tax anticipation warrants by second class cities in anticipation of property tax revenues as provided in IC 36-4-6-20. The temporary loans shall be evidenced by time warrants of the district in terms designating the nature of the consideration, the time or times payable, the funds and revenues in anticipation of which the warrants are issued and out of which they are payable, and the place where they are payable upon presentation on or after the date of maturity. The interest accruing on the warrants to date of maturity shall be included in their face value. The resolution authorizing the issue of the temporary loans must appropriate and pledge a sufficient amount of the current revenues in anticipation of which the warrants are issued for their payment.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.185.

IC 36-9-25-40**Certain districts; exercise of powers on behalf of second class city alone**

Sec. 40. If the district of a department established under section 1(b) of this chapter includes territory of another municipality, the

powers granted the board over local sewers and drains, solid waste collection, and collection of dead animals may be exercised for the use and benefit of the second class city alone as long as all of the direct and allocable costs of the service are paid from money raised solely from the property located within the city, from charges made to persons within the city, or both.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-41

Consolidated cities; revenue bonds for sewage works

Sec. 41. (a) This section applies to each consolidated city.

(b) To raise money to pay the costs of acquiring, constructing, and improving sewage works and property necessary for sewage works, the board may have issued, in the name of the municipality, revenue bonds payable solely from the revenues of the sewage works for which they are issued. Revenue bonds issued under this section are not a corporate indebtedness of the district or the municipality.

(c) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the board and will be payable and mature at the time or times determined by the board in the resolution.

(d) The revenue bonds may be made redeemable before maturity at the option of the board, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the revenue bonds must determine the form of the bonds and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(g) The revenue bonds must contain a statement on their face that neither the district nor the municipality is obligated to pay the principal or interest on them, except from the net revenue of the sewage works that are deposited in the sinking fund established by subsection (t).

(h) The revenue bonds are negotiable instruments.

(i) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone or as to both principal and interest.

(j) The revenue bonds shall be executed in the same manner as other bonds issued under section 27 of this chapter.

(k) The revenue bonds shall be sold by the district and the municipal fiscal officer in the manner that is determined to be in the best interests of the district, but only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(l) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons.

The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(m) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the first issue, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

(n) Subject to the provisions and limitations of any resolution or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section for the purpose of improving any works acquired or constructed under this chapter without priority of one (1) issue over another.

(o) Revenue bonds issued under this section are exempt from taxation for all purposes.

(p) Any action to contest the validity of revenue bonds issued under this section must be brought at least five (5) days before the advertised date for the sale of the bonds.

(q) The first proceeds of any revenue bonds issued under this section shall be used to repay all amounts advanced for preliminary expenses. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(r) After the payments required by subsection (q) have been made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by subsection (t).

(s) The holders of the revenue bonds have a lien on the bond proceeds until they are applied under this section.

(t) At or before the time of issuance of revenue bonds under this section, the board, by resolution, shall:

(1) establish a sinking fund for the payment of:

- (A) the principal of and interest on the revenue bonds; and
 - (B) the charges of banks or trust companies for making payment of the principal or interest on the revenue bonds;
- and

(2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The resolution may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this section.

(u) The rights granted by this section are subject to any restrictions contained in the resolution authorizing the issuance of revenue bonds or in any trust indenture securing the bonds. The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce

all rights granted by this section or under the resolution or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works. If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the district, municipality, the bondholders, and the trustee, if any. The receiver may:

- (1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;

- (2) pay any revenue bonds and interest outstanding; and

- (3) apply the revenues in conformity with this chapter, the resolution authorizing the bond issue, and the trust indenture, if any.

(v) Bonds issued under this section are subject to the requirements of IC 36-3-5-8.

As added by P.L.80-1997, SEC.23.